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No. 481.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1906.

ADDISON JOHNSON, Agent and Warden of Sing Sing Prison,
Appellant,

vs.

CHARLES C. BROWNE.

Brief in Opposition to Motion to Advance.

Terence J. McManus,
BLACK, OLCOTT, GRUBER & BONYNGE,
Attorneys for Appellee.

C. G. Burgoyne, Walker and Centre Streets, N. Y.

Supreme Court of the United States,

OCTOBER TERM, 1906.

ADDISON JOHNSON, Agent and Warden of Sing Sing Prison,
Appellant,

AGAINST

CHARLES C. BROWNE,
Appellee.

BRIEF IN OPPOSITION TO MOTION TO ADVANCE.

It is the contention of the Government that the precise question involved here (*i. e.*, whether the treaty provisions with Great Britain or the decisions of this Court permit a person, duly convicted in the United States Courts before his flight, to go at large in the United States while awaiting trial on another offense for which he has been extradited) has never been passed upon by this Court.

This may be true. But it is the contention of the appellee that the question raised is an integral part of the broader question so fully and finally determined by this Court in the leading case of the United States vs. Rauscher, 119 U. S., 407.

Therefore, the doctrine of *stare decisis* must prevail.

The decision in the Rauscher case was based upon two distinct grounds:

(1) The provision in the treaty of 1842.

(2) Sections 5270 and 5275 of the Revised Statutes of the United States.

The Court said, in construing these sections:

> "The obvious meaning of these two statutes, "which have reference to all treaties of extradi- "tion made by the United States, is that the "party shall not be delivered up by this govern- "ment to be tried for any other offense than that "charged in the extradition proceedings, and that, "when brought into this country on similar pro- "ceedings, *he shall not be arrested* or tried for any "other offense than that with which he was "charged in those proceedings until he shall have "had a reasonable time to return unmolested to "the country from which he was brought."

These statutes have not been changed since the decision in the Rauscher case.

The treaty of 1889 has not even by implication repealed them.

On this point Judge HOUGH in his opinion, sustaining the writ, said:

> "They [the treaty provisions] do not purport to repeal or modify any law of the United States, and they are not inconsistent with the continued enforcement of Sections 5272 and 5275 of the revised statutes, which constitute a rule of conduct obligatory upon the officers of the United States whose conduct is here questioned."
>
> "It is, of course, true that a statute inconsistent with a treaty is repealed by implication. It is too clear for argument that there is no such implication in this instance. I am, therefore, of opinion that without further interpreting the language of the convention the governmental contention is untenable in the light of the above referred-to sections of the Revised Statutes as still authoritatively interpreted by the case of Rauscher. * * * As, however, I regard the general doctrine laid down in the case of Rauscher, as based upon existing statutes of

the United States, to be entirely conclusive of this matter, I need not pursue the consideration of the convention of 1889 further than to say that it appears to me very doubtful, in view of the provisions of article 7, that article 3 should be so construed as to permit either of the contracting parties to do so by indirection under that article what neither could do openly under article 7, and that I consider the insertion of the word "punished" in article 2 as more than a recognition of the historical fact that political offences are frequently punished without trial" (pp. 11 and 12, Record).

The courts have since repeatedly construed the Rauscher case and have often given broader latitude to that decision than was given to it by Judge HOUGH in the case at bar (*In re* Reinitz, 39 Fed. Rep., 204; *in re* Baruch, 41 Fed. Rep., 472; Hall vs. Patterson, 45 Fed. Rep., 352).

The spirit of the whole Rauscher decision, the analysis of the procedure under which extradition is effected, the construction which the Court has given to Sections 5272 and 5275 hereinabove referred to, indicate that a broader and larger view was taken by the Supreme Court than that which Mr. Smith would accord to it.

U. S. vs. Rauscher is absolutely controlling.

The question raised here has already been decided.

Therefore there is nothing disclosed by the motion papers which, it is respectfully submitted, justifies the advancement of this appeal.

Respectfully submitted,

BLACK, OLCOTT, GRUBER & BONYNGE,

Attorneys for Appellee.

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TERENCE J. MCMANUS,

Of Counsel.